



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Preston's Legal Support and Court Reporting
Services - Reduced Rates and Liquidated
Damages - Delay

File: B-254610

Date: April 20, 1994

DIGEST

An agency recommends remission of a portion of the liquidated damages it assessed against a court-reporting contractor for untimely delivery of transcripts. We concur because the agency acknowledges that one reason for the delay was that the agency awarded the contract only a few days before the first scheduled hearing.

DECISION

The National Labor Relations Board ("NLRB") has recommended that this Office remit certain amounts withheld from Preston's Legal Support and Court Reporting Services as liquidated damages. The NLRB also asks whether it may remit to Preston portions of fees withheld for late delivery of agency hearing transcripts.¹ Remission of \$1,962.00 in liquidated damages is approved.

The contract called for Preston to deliver "ordinary" hearing transcripts within 10 days of the close of the hearing at a rate of \$0.75 per page and "prompt" hearing transcripts within 3 days at a rate of \$1.50 per page. Prompt transcripts delivered between 4 and 10 days after the hearings would be paid at the rate for ordinary transcripts. All transcripts delivered after 10 days would be assessed liquidated damages of either \$10 per business day or \$0.10 per page, whichever was greater each day.

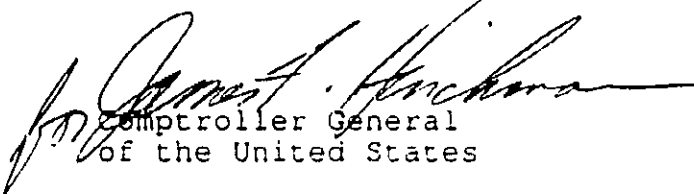
Preston made late deliveries on a number of transcripts during the first two months of the contract, resulting in the withholding of \$2,128.23 for reduced rates for late delivery of the "prompt" transcripts (from \$1.50 to \$0.75 per page) and \$2,760.76 in liquidated damages.

¹The agency's request for a decision was joined by Ms. J. Gwen Preston, President, Preston's Legal Support and Reporting Services, the contractor in the case.

We have limited statutory authority to grant relief from some liquidated damages. Under this authority, upon the recommendation of the head of the contracting agency, the Comptroller General may remit the "whole or any part of such liquidated damages for delay" withheld by the agency "as in his discretion may be just and equitable." 41 U.S.C. § 256a (1988). This authority would extend to the liquidated damages assessed for delay in this case, but not to the reduced rate applicable for the late delivery of the "prompt" transcripts.²

In this case, the NLRB has recommended remission of the liquidated damages that accrued during the first 15 days of the contract (\$1,962.00) on the grounds that the agency was able to provide only 1 day advance notice of the contract, rather than the normal 15-30 days notice.³ In this regard, the record shows that, because of procurement delays, the agency notified Preston of contract award on December 31, 1992, and that the first scheduled hearing would be on the next business day, January 4.

In view of the agency's explanation and acknowledgement of some responsibility for Preston's untimely performance, we concur with the agency's recommendation and remit liquidated damages in the amount of \$1,962.00.


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²The NLRB states that it has no legal authority to grant relief regarding the contractually agreed reduced rate for late delivery. We agree. Absent consideration, which is not present here, agents and officers of the government may not modify existing contracts or surrender or waive contract rights that have vested in the government. Ray Phelps Company, B-150326, Jan. 30, 1967; 47 Comp. Gen. 170 (1967).

³The NLRB's Director of Administration consented to the recommendation on behalf of the agency.